Supreme Court, U.S.
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No. 98-1909

In The

Supreme Court of the United States

J. GRANT HUNEYCUTT, *et al.*,

Petitioners,

v.

CITY OF SUFFOLK,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Virginia

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. DID THE CITY OF SUFFOLK, VIRGINIA PROPERLY VACATE THE FAMILY TRANSFER PLAT OF THE RESPONDENTS, PURSUANT TO VIRGINIA CODE SECTIONS 15.2-2272(2) and 15.2-2244 (1950), AS AMENDED, AND SUFFOLK CITY CODE SECTION 78-6? OR ARE THEY VIOLATIVE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION AND VOID FOR VAGUENESS?

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OPINION BELOW

The Opinion of the Circuit Court of the City of Suffolk, Virginia, dated May 28, 1998, is contained in the Huneycutts' Petition at 3a. The Opinions of the Virginia Supreme Court affirming this decision and denying an appeal, are set forth in the Huneycutts' Petition at 1a and 2a.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional and statutory provisions are set forth herein and in Huneycutts' Petition at 5a and 6a.

VIRGINIA CODE SECTION 15.1-482(b) (1950), AS AMENDED

> In cases where any lot has been sold, the plat or part thereof may be vacated according to either of the following methods . . . (b) By ordinance of the governing body of the county or municipality in which the land shown on the plat or part thereof to be vacated lies on motion of one of its members or on application of any interested person. Such ordinance shall not be adopted until after notice has been given as required by Section 15.1-431. The notice shall clearly describe the plat or portion thereof to be vacated and state the time and place of the meeting of the governing body at which the adoption of the ordinance will be voted upon. Any person may appear at such meeting for the

> purpose of objecting to the adoption of the ordinance. An appeal from the adoption of the ordinance may be filed within thirty days with the circuit court having jurisdiction of the land shown on the plat or part thereof to be vacated. Upon such appeal the court may nullify the ordinance if it finds that the owner of any lot shown on the plat will be irreparably damaged. If no appeal from the adoption of the ordinance is filed within the time above provided or if the ordinance is upheld on appeal, a certified copy of the ordinance of vacation may be recorded in the clerk's office of any court in which the plat is recorded . . .

STATEMENT OF THE CASE

The Petitioner, J. Grant Huneycutt, submitted and had approved a plat, entitled "Family Transfer Plat showing Subdivision of Property Owned by J. Grant Huneycutt & Betty C. Huneycutt-Chuckatuck Borough-Suffolk, Virginia" (the "Plat"), under Virginia Code Sections 15.1-466 A.12. and G. (1950), as amended, (now Section 15.2-2244), and Suffolk City Code Section 25.9-4 (now Section 78-6, referred to as the Family Transfer Act). Such Plat was duly recorded in the Circuit Court Clerk's Office of the City of Suffolk on August 9, 1995. The Plat listed four parcels of land and a residue. The residue was sold in September 1995, to an unrelated third party. The deeds conveying these parcels to family members were not recorded until April 18, 1996.

Information became available that this subdivision of land, under the Family Transfer Act, had been done in

circumvention of the Subdivision Ordinance of the City of Suffolk. Such information included not only the sale of the residue parcel, but also the lateness of the recording of the deeds, information from neighbors regarding the intentions of Mr. Huneycutt, and his putting these parcels on the market for sale. The City at that time filed a Petition for Injunctive Relief and Declaratory Judgment, declaring the recordation of the Plat to be in circumvention of the Family Transfer Act, and an injunction to prevent further conveyance of any of the lots thereon.

The City of Suffolk, under Virginia Code Section 15.1-482(b) (1950), as amended (now Section 15.2-2272(2)), duly advertised and held a public hearing to hear evidence regarding the vacation of the Plat. Mr. Huneycutt, by counsel, appeared and spoke in opposition to the vacation. The City Council of the City of Suffolk voted, after hearing the evidence presented at the public hearing, and by staff and counsel, to adopt Ordinance 79-96, vacating the Plat, except for the Residue parcel and the ingress and egress easement. Mr. Huneycutt appealed this decision, asking the Court to nullify the Ordinance. Both parties, by counsel, filed briefs in regard to the City's authority to vacate the Plat. The Circuit Court of the City of Suffolk ruled that the City had the authority to vacate the Plat. The appeal of the Huneycutts was dismissed, and the City non-suited its Injunction and Declaratory Judgment action. The Huneycutts filed their petition for appeal to the Supreme Court of Virginia, which was denied on December 17, 1998. A rehearing was requested which was also denied, on February 26, 1999.

Suffolk City Code Section 78-6 is derived from an explicit grant of authority from the Code of Virginia

Section 15.2-2244 (1950), as amended, not Section 15.2-2272 as stated by Petitioners.

ARGUMENT

JURISDICTION OF THIS COURT IS NOT BASED UPON 28 USCS 1331.

Title 28, Section 1331 of the United States Code sets forth the Federal question jurisdiction of the District Courts. However, the District Court has only original jurisdiction and not appellate jurisdiction. *The Rooker-Feldman* doctrine establishes the jurisdiction for review of State Supreme Court decisions to be vested only in the United States Supreme Court, by certiorari, not the District Courts. *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), and *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). In the instant case, the Petitioners have attempted to base their jurisdiction to this Court upon a federal question, but have erroneously cited the wrong United States Code Section. Therefore, jurisdiction can not be based on the United States Code Section cited.

There is also no substantial federal question presented in this case which would warrant an award of certiorari. The issues involve a land use statute, basically passed by the Commonwealth of Virginia, and implemented by the City of Suffolk. Such issues are locality based and involve factual issues, best decided by the trier of fact and the states. Therefore, the issues presented do not rise to the level of a substantial federal question to warrant a grant of certiorari.

CIVIL STATUTES REQUIRE LESS STRINGENT CONSTITUTIONAL REVIEW THAN CRIMINAL STATUTES OR THOSE WITH FIRST AMENDMENT CONCERNS.

The Family Transfer Statutes in question here, Virginia Code Section 15.2-2244 (1950), as amended, and Suffolk City Code Section 78-6, Petition at 5a, allow an individual to subdivide their property and deed the lots to family members, as that term is defined in the Virginia and Suffolk Codes and by case law, without abiding by the local Subdivision ordinance. Such an ability is a substantial help to those attempting to keep land, such as a family farm, within the family unit, and is a privilege. However, the statutes state that the Family Transfer can not be used "for the purpose of circumventing this subdivision." Id.

The City Council of the City of Suffolk vacated the Family Transfer Plat of the Petitioners after abiding by the requirements enunciated in Virginia Code Section 15.2-2272(2) (1950), as amended. City Council issued the required Notice, held a public hearing at which the Huneycutts, by counsel, spoke in opposition, and duly passed an Ordinance vacating the Plat. Procedural due process was clearly accomplished. Petitioners' contention that the statutes do not pass substantive due process, as they are void for vagueness is not substantiated. In support of this assertion, they cite *Kolender v. Lawson*, 461 U.S. 352 (1983) and *Grayned v. City of Rockford*, 408 U.S. 104 (1972), both of which involved penal statutes and First Amendment concerns. However, the statutes here are not penal, but civil in nature, and involve no First Amendment concerns.

> The standard for measuring vagueness is not rigid. 'The degree of vagueness that the constitution tolerates. . . . depends in part on the nature of the enactment. The [United States Supreme] Court has also expressed greater tolerance of enactments with civil rather than criminal penalties because the consequences of imprecision are qualitatively less severe.' (Footnote omitted) Furthermore, if a 'law interferes with the right of free speech or association, a more stringent vagueness test should apply.'
>
> *Jackson v. W.*, 14 Va App. 391, 403, 419 S.E. 2d 385 (1992), quoting, *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 498-499 (1982).

Thus, the statutes involved here are subject to a less stringent review. However, no definitive standard is enunciated, except that some clarity is required. *U.S. v. Powell*, 423. U.S. 87, 92-93 (1975). It appears to be a very fact-driven process. In this instant, clarity is provided by the requirement not to do Family Transfers to circumvent the Subdivision Ordinance. Surely, common sense says that if you only do Family Transfers so that you can immediately sell off the lots to avoid going through the requirements of the Subdivision Ordinance, then that is circumvention. The Huneycutts had fair notice of what was required to stay within the bounds of the law; transfers to family members without trying to get around the Subdivision Ordinance. In essence, it is circumvention to attempt to create subdivisions without the restrictions and requirements of the Subdivision Ordinance, by using Family Transfers. This is exactly what was attempted. Common sense dictates that a privilege like Family Transfers have to be utilized fairly or anarchy will result.

The facts of this case are also important to consider because without First Amendment concerns the Huneycutts can not assert the vagueness of the statute as it relates to others, but only as it relates to themselves. *Maynard v. Cartwright*, 486 U.S. 356, 361 (1988). As these statutes apply to them, there is no vagueness. Their actions were done to circumvent the Subdivision Ordinance, and they were aware of the consequences.

Lastly, the requirements of Virginia Code Section 15.2-2272(2) (1950), as amended, are clear and do give fair notice and equitable enforcement to the Huneycutts. The steps are clearly enunciated by the Code, and were followed, giving the Huneycutts an opportunity to "defend" their actions, which they did. Again, the facts are important and establish that the requirements of Family Transfers are clear, and were clear to the Huneycutts.

Thus, the Family Transfer Statutes and Virginia Code Section 15.2-2272(2) pass Constitutional muster under the review established for civil statutes, giving to the Huneycutts both fair notice and fair enforcement, as the facts of this case are examined.

CONCLUSION

For the foregoing reasons the petition for a writ of certiorari should be denied.

Respectfully submitted,

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